THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO : 14999 of 2005

DATED 05-08-2005

Between:

Tirumala Surya Chandra Rao, S/o. Satyam, Hindu,
R/o. Atlapadu (V), Nidadavolu (M), W.G. District,

..... PETITIONER

AND

1 Regional Joint Commissioner, Multi Zone Endowments, Kakinada, E.G. District,
2 Sri Visweswaraswamy Temple, Atlapadu Nidadavolu (M), W.G. District.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No : 14999 of 2005

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ORDER:

The case of the petitioner herein is that he is the cultivating tenant of the 2nd respondent in respect of dry land of an extent of Ac.3-20 cents in R.S.No.69 of Atlapadu village, Nidadavolu Mandal, West Godavari District.

Sri C.Ramachandraraju, learned counsel for the petitioner, on instructions,

submits that the petitioner has been cultivating the land for a long time prior atleast six years before Act 30 of 1987 came into force. The petitioner submitted a representation before the Assistant Commissioner of Endowments, West Godavari District, Eluru, on 23-06-2004 contending that he was cultivating an extent of Ac.3-20 cents of dry land belonging to the 2nd respondent-Temple and that while his family owned Ac.1-56 cents of dry land originally, he had sold an extent of Ac.1-00 cents of land and that they owned only Ac.0-56 cents of dry land. The petitioner contended that he is a small farmer under Section 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. The Assistant Commissioner, Endowments, Eluru, however, in his order dated 16-07-2004, while recording the fact that the petitioner had submitted a representation, erroneously recorded that the petitioner had stated that he was cultivating an extent of Ac.3-20 cents of wet land, when in fact, the petitioner, in his representation, dated 23-06-2004 had stated that he was cultivating an extent of Ac.3-20 cents of dry land only. The Assistant Commissioner held that on enquiry it was found that the petitioner was not entitled to the relief and rejected the petitioner's request for being determined as landless poor person. Aggrieved thereby, the petitioner filed Appeal No.110 of 2005 before the Regional Joint Commissioner, Multi Zone, Endowments Department, Kakinada, who by order dated 30-06-2005, dismissed the appeal holding that the petitioner herein was admittedly holding an extent of Ac.3-20 cents of wet land as a lessee and that he owned Ac.1-56 cents of dry land and the extent of land held by him exceeded the limits of Ac.2-50 cents of wet land and therefore the petitioner was not entitled to claim the status of a landless poor person.

Smt.N.Indrani, learned Standing Counsel for the 2nd respondent, relies on the counter affidavit and produced a copy of the grounds of revision filed by the petitioner herein before the Regional Joint Commissioner, Endowments

Department, Kakinada, wherein it was stated that the petitioner owned an extent of Ac.3-20 cents of wet land.

A reply affidavit has been filed by the petitioner, wherein it is stated that while the land in question is dry land and that in his original representation to the Assistant Commissioner he had stated the same, his advocate, by mistake, had stated in the revision petition that the land of Ac.3-20 cents was wet land. It is further stated that the petitioner was not aware of the mistake committed by his Advocate till he came to know of the same through his counsel in the writ petition.

The Regional Joint Collector (R-1) had rejected the petitioner's claim for being determined as a landless poor person solely on the basis of the alleged admission, which is now contended to be a mistake. It is necessary to take note of the fact that the petitioner in his original representation dated 23-06-2004, submitted to the Assistant Commissioner of Endowments, had stated that he was cultivating an extent of Ac.3-20 cents of dry land belonging to the Temple. Whether the land being cultivated by the petitioner of an extent of Ac.3-20 cents is dry or wet land is a matter required to be determined by the first respondent on the basis of evidence placed before him.

Smt.N.Indrani, appearing on behalf of the 2nd respondent-Temple, submits that auction has already been held and if the matter is now referred to the first respondent, the Temple would suffer irreparable loss and injury. She further submits that pahanies and other records would clearly establish that the land under cultivation of the petitioner is wet land and not dry land.

It is not for this court, in exercise of its jurisdiction under Article 226 of the Constitution of India, to adjudicate as to whether the land belonging to the 2nd

respondent-Temple and which is under the cultivation of the petitioner herein is dry land or wet land. This is a matter for the first respondent to determine on the basis of material on record. The second respondent is entitled to place all material available with it before the first respondent, who shall on the basis of the evidence furnished by the petitioner and the 2nd respondent determine as to whether the land under cultivation of the petitioner herein, of an extent of Ac.3-20 cents, is dry land or wet land. This exercise of determination shall be completed by the first respondent within a period of two weeks from the date of receipt of a copy of this order.

Smt.N.Indrani, learned counsel contends that if the interim order is not vacated, the petitioner is likely to commence agricultural operations and even if it is later determined that the land under cultivation is wet land, the petitioner would claim equities on the ground that agricultural operations have commenced.

I find force in this contention. Both the petitioner and the 2nd respondent shall maintain status quo as on today till the first respondent passes appropriate orders and determines as to whether the land under the cultivation of the petitioner is dry or wet land. Needless to state that this determination is required to be completed expeditiously, since any delay would cause hardship both to the petitioner and the second respondent.

The writ petition is accordingly disposed of. No order as to costs.

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05-08-2005

Note:-

Issue C.C. by Tuesday

(B/o)

Prv